

GENERAL LEGAL ISSUES

Confidentiality

All records and information required in dependency proceedings are confidential and exempt from public inspection or access. § 39.0132.

- The statute lists persons who can access this information without a court order:
 - a child and the parents;
 - authorized court personnel;
 - department and its designees;
 - correctional probation officers;
 - law enforcement agencies;
 - the guardian ad litem; and
 - others entitled under Chapter 39.

§ 39.0132(4)(a)(1).
- Any information held by a guardian ad litem related to the best interests of a child, as determined by a guardian ad litem, is confidential and exempt from disclosure. The information may not be disclosed, except under order of the court, to anyone other than:
 - authorized court personnel;
 - department and its designees;
 - correctional probation officers;
 - law enforcement agencies;
 - the guardians ad litem; and
 - others entitled under Chapter 39.

§ 39.0132(4)(a)(2).
- The Justice Administrative Commission (JAC) may inspect court dockets to audit compensation of court-appointed attorneys. If the docket is insufficient, the JAC may petition the court for additional documentation as necessary and appropriate.

§ 39.0132(3).
- Pursuant to § 39.0132, no court record of proceedings under Chapter 39 is admissible in evidence in any other civil or criminal proceeding, except for:
 - appeals;
 - perjury;
 - disqualification;
 - a final order entered pursuant to an adjudicatory hearing is admissible in evidence in any subsequent civil proceedings relating to placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child; and
 - evidence admitted in any proceeding under Chapter 39 may be admissible in evidence when offered by any party in a subsequent civil proceeding relating to placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child if:

- Notice is given to the opposing party or opposing party's counsel of the intent to offer the evidence, and a copy of such evidence is delivered to the opposing party or the opposing party's counsel; and
 - The evidence is otherwise admissible in the subsequent civil proceeding.
- § 39.0132(6).

Abuse hotline reports and records are not open to public inspection. Sections 39.202 and 39.2021 govern the confidentiality of all reports and records held by DCF, including reports made to the central abuse hotline, regarding a child's abandonment, abuse, or neglect. Such reports and records are not open to public inspection.

- The statute contains a list, however, of those persons authorized to access these records. § 39.202(2).
- Anyone who "knowingly and willfully" discloses confidential information contained in the central abuse hotline or departmental records of child abuse, abandonment, or neglect is guilty of a second-degree misdemeanor. §§ 39.202(8), 39.205(6).
- Any person or organization, including the department, may petition the court for an order making the department's records public which pertain to investigations of alleged abuse, abandonment, or neglect of a child. The court shall determine whether good cause exists for public access to the records. In making this determination, the court shall balance the best interests of the child who is the focus of the investigation and the interests of that child's siblings, together with the privacy rights of other persons identified in the reports, against the public interest. § 39.2021(1).
- When the court determines that good cause for public access exists, the court shall direct the department to redact the name and identifying information with respect to any person identified in any protective investigation report until such time as the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, abandonment, or neglect. § 39.2021(3).

Privileged communications. With the exception of the attorney-client privilege and the clergy privilege, normally privileged communication between husband and wife and between any professional person and his/her patient/client do not apply to communications involving the alleged perpetrator of known or suspected child abuse, abandonment, or neglect. § 39.204.

- The records and information compiled in termination of parental rights cases are confidential and exempt from public inspection or disclosure. § 39.814.
 - All records in TPR proceedings permanently depriving a parent of custody are permanently preserved. § 39.814(2).
 - Only specified persons can access this information without a court order (e.g., the child's custodian and their attorneys, law enforcement agencies, DCF, etc.). § 39.814(3).
 - Court records in TPR proceedings are admissible in other civil and criminal proceedings under the following circumstances only:
 - appeals § 39.814(6)(a);
 - perjury § 39.814(6)(b);

- a final order entered pursuant to an adjudicatory hearing is admissible in evidence in any subsequent civil proceeding relating to placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child § 39.814(6)(c); and
 - evidence admitted in any proceeding under this part may be admissible in evidence when offered by any party in a subsequent civil proceeding relating to placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child if:
 - Notice is given to the opposing party or opposing party's counsel of the intent to offer the evidence, and a copy of such evidence is delivered to the opposing party or the opposing party's counsel; and
 - The evidence is otherwise admissible in the subsequent civil proceeding.
- § 39.814(6)(d).
- Final orders, records, and evidence in any proceeding under this part that are subsequently admitted in evidence pursuant to subsection (6) remain subject to subsections (3) and (4). § 39.814(7).

Dependency hearings are open to the public, except for TPR hearings. § 39.507(2).

However, the court may close any hearing or exclude someone in particular, if it determines "that the public interest or the welfare of the child is best served by so doing." § 39.507(2).

Termination of parental rights hearings are closed to the public. § 39.809(4). Court closure of termination of parental rights hearings is mandatory. Natural Parents of J.B. v. DCF, 780 So. 2d 6 (Fla. 2001) (holding that closure is statutorily mandated; therefore the court need not make particular showing to justify closure). "Because there is no presumption of openness in TPR proceedings, a mandatory closure requirement does not unconstitutionally limit the public's right of access to the proceedings." *Id.* at 10. Moreover, ". . . the mandatory closure of certain proceedings involving children is not an unconstitutional limitation on First Amendment freedoms." *Id.* at 11.